



**DEPARTMENT OF EDUCATION**

**34 CFR Chapter II**

**[Docket ID ED-2023-OESE-0038]**

**Proposed Priority and Requirements--National Technical Assistance Center on Positive Behavioral Interventions and Supports**

**AGENCY:** Office of Elementary and Secondary Education, Department of Education.

**ACTION:** Proposed priority and requirements.

**SUMMARY:** The Department of Education (Department) proposes a priority and requirements under the National Technical Assistance Center on Positive Behavioral Interventions and Supports (Center), Assistance Listing Number (ALN) 84.326S. The Center is funded jointly through the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities and the School Safety National Activities programs. The priority and the requirements proposed in this document are specific to the work funded out of the School Safety National Activities program and are designed to improve student safety and well-being. We may use this priority or one or more of these requirements in fiscal year (FY) 2023 and later years.

**DATES:** We must receive your comments on or before [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

**ADDRESSES:** Comments must be submitted via the Federal eRulemaking Portal at [regulations.gov](http://www.regulations.gov). However, if you require an accommodation or cannot otherwise submit your comments via [regulations.gov](http://www.regulations.gov), please contact the program contact person listed under FOR FURTHER INFORMATION CONTACT. The Department will not accept comments by fax or by email, or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comments only once. Additionally, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Please go to [www.regulations.gov](http://www.regulations.gov) to submit your comments electronically. Information on using [Regulations.gov](http://www.regulations.gov), including instructions for finding a notice on the site and submitting comments, is available on the site under "FAQ."

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing on the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Renee Bradley, U.S.  
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**SUPPLEMENTARY INFORMATION:**

Invitation to Comment: We invite you to submit comments regarding the proposed priority and requirements. To ensure that your comments have maximum effect in developing the final priority and requirements, we urge you to clearly identify the specific section of the proposed priority and requirements that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from the proposed priority and requirements. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities. Please also feel free to offer for our consideration any alternative approaches to the subjects addressed by the proposed priority and requirements.

During and after the comment period, you may inspect all public comments about the proposed priority and requirements by accessing Regulations.gov. You may also inspect the comments in person. Please contact the person listed under FOR FURTHER INFORMATION CONTACT to make arrangements to inspect the comments in person.

Note: The Center is jointly funded under the Individuals with Disabilities Education Act (IDEA) and the Elementary and Secondary Education Act (ESEA). By combining funds from two separate programs, the Department is able to make a more comprehensive investment to address the purpose of the Center. The Department intends to publish a notice inviting applications later this fiscal year and applicants may be expected to address the priorities and requirements under both authorizing statutes. Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to priorities from allowable activities specified in the statute (see sections 663 and 681(d) of IDEA) that may be included in a notice inviting applications for the Center. Therefore, we are only taking public comment on the proposed priority and requirements described in this document, which are to be funded under the ESEA.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priority and requirements. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

Purpose of Program: The purpose of the Center is to enhance the capacity of States and local educational agencies (LEAs) to implement positive and safe school climates, and effectively support and respond to students' social, emotional, behavioral, and mental health needs to ensure participation and enhance learning, by implementing evidence-based practices within a multi-tiered system of support (MTSS) framework.

Program Authority: Section 4631(a)(1)(B) of the ESEA (20 U.S.C. 7281).

PROPOSED PRIORITY:

This document contains one proposed priority.

Background:

Many students need additional supports to address social, emotional, and behavioral challenges that impact their full access to and participation in learning (Chafouleas, 2020). These challenges, if not properly

addressed, can lead to student responses that are inconsistent with school or program expectations. The COVID-19 global pandemic exacerbated these challenges, accelerating the need to provide school-based social, emotional, behavioral, and mental health supports and leverage the existing evidence base about how to provide nurturing educational environments to meet the needs of our nation's youth.

MTSS frameworks such as positive behavioral interventions and supports (PBIS)<sup>1</sup> have been validated by numerous randomized control trials (Bradshaw et al., 2012; Freeman et al., 2017). When implemented with fidelity, PBIS outcomes include reductions in removals of students from instruction; improved student exposure to and success in academics (grades and completion); improved educator satisfaction and retention; and improved overall ratings of school safety, belonging, and climate.

Despite improved outcomes and knowledge from PBIS implementation efforts over the last two decades, data from

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<sup>1</sup> The term "positive behavioral interventions and supports" was first used in a priority published by the Department in 1997, and it is currently used in the IDEA (e.g., sections 601(c)(5)(F), 611(e)(2)(C)(iii), 614(d)(3)(B)(i), 662(b)(2)(A)(v), and 665) and the ESEA (e.g., section 4631(a)(1)(B)). We do not use PBIS to mean any specific program or curriculum. Rather, we use the term generically to reference a multi-tiered framework used to improve the integration and implementation of social, emotional, behavioral and mental health practices, data-driven decision-making systems, professional development opportunities, school leadership, supportive SEA and LEA policies, and evidence-based instructional strategies. A PBIS framework helps to organize practices to improve social, emotional, behavioral, mental health and academic outcomes by improving school climate, promoting positive social skills, promoting effective strategies to support and respond to student needs, and increasing learning time.

the Office for Civil Rights Data Collection suggests students from underserved groups are more likely to experience exclusionary discipline (e.g., suspensions, expulsions) (U.S. Department of Education, Civil Rights Data Collection SY17-18, Office for Civil Rights, 2021). Disaggregated data shows that disproportionality in discipline grows when considering race, gender, and disability (Civil Rights Data Collection SY17-18, Office for Civil Rights, 2021). Research consistently shows that students of color, particularly Black students, Native students, and Black students with disabilities are significantly more likely than their non-disabled, or white peers to be subjected to exclusionary discipline practices, including office discipline referrals and suspensions (e.g., Gage et al., 2019; McIntosh et al., 2018; McIntosh et al., 2021; Civil Rights Data Collection SY17-18, Office for Civil Rights, 2021). While disproportionality with respect to Black boys has long been acknowledged, more recent data analysis indicates the disproportionality also exists for Black girls as compared to White girls (Hassan & Carter, 2021). Other studies show disproportionality based on gender, historically demonstrating boys receive suspensions and expulsions at higher rates than girls (Bradshaw et al., 2010). Higher rates of punitive discipline practices also exist for students who identify as LGBTQ and those with disabilities (Himmelstein and

Brückner, 2011; Brobbey, 2018). When students are denied access to instruction and participation in school opportunities, they are more likely to experience negative outcomes in school and later in life, including poor academic outcomes, lower graduation rates, incarceration, and employment and relationship challenges (Hemez et al., 2020; Lansford et al., 2016).

One of the most significant barriers to reducing exclusionary and aversive discipline practices for students, including students of color and students with disabilities, is the lack of culturally and linguistically inclusive pre-service and in-service training for teachers and leaders on effective practices for creating positive, safe learning environments to teach and support desired school behaviors and for responding to and mitigating behaviors that are inconsistent with school expectations and interfere with learning. The PBIS framework has provided an effective multi-tiered structure through the implementation and examination of systems, practices, and data to assist LEAs and schools in addressing inequities. When there is fidelity in implementing evidence-based practices (EBPs) to prevent, reduce, and mitigate interfering behaviors within a PBIS framework, studies have found the following statistically significant results: improved perception of school safety; reductions in overall behaviors that are inconsistent with classroom or school

expectations and that interfere with learning; and reduction of bullying behaviors, office discipline referrals, chronic absenteeism, and suspensions (Waasdorp et al., 2012). The PBIS framework has solidified the importance of core strategies, including: implementing EBPs; providing the systems needed to support those practices; and data-based decision-making; to create and sustain positive, safe, and predictable learning environments. Fidelity in the implementation of the core strategies has also demonstrated the importance of adult responses, including effectively supporting and responding to student behavior (Horner, et al., 2020).

Although prior Department investments have led to successful implementation of the PBIS framework and positive outcome data in over 27,000 schools, based on persistent needs in the field, the Department has determined that additional and continued technical assistance (TA) is needed to focus on: (1) students with more intensive social, emotional, behavioral, and mental health needs and those most likely to be excluded from the learning environment due to behavior that interferes with learning; (2) pre-service and in-service training on culturally and linguistically inclusive practices that support students from underserved groups; (3) improving implementation fidelity; and (4) addressing other systemic inequities such as access to school funding, experienced

educators, and advanced coursework opportunities. In addition, the Department has determined that State educational agencies (SEAs) and LEAs could benefit from further TA to develop, expand, and sustain school-wide frameworks and to build personnel capacity and expertise to promote safe, positive, predictable, and culturally and linguistically inclusive learning environments where students feel a sense of belonging. Such additional TA would be focused on increasing the use of EBPs to more effectively support and respond to student needs, such as teaching school and classroom expectations, building classroom cultures of respect and belonging, and implementing trauma-informed practices. Such additional TA also would be focused on using EBPs to reduce the use of restraints seclusion and corporal punishment; chronic absenteeism; incidents of bullying; the disproportionate application of disciplinary procedures, such as suspension and expulsion, for students, including students of color and those with disabilities; unnecessary referrals of students to law enforcement; and violent and traumatic school incidents.

The Center will support States and LEAs in implementing EBPs within a MTSS/PBIS framework that improves results for children, including children with disabilities. While PBIS is one evidence-based MTSS framework for addressing social, emotional, behavioral and

mental health needs, the Department expects that the Center will stay abreast of developing frameworks and identify and incorporate a broad array of EBPs to support and respond to student needs, and tailor technical assistance in the settings established in the priority. This investment is aligned to the Secretary's Supplemental Priorities and Definitions for Discretionary Grant Programs published in the *Federal Register* on December 10, 2021 (86 FR 70612), in the areas of meeting student social, emotional, and academic needs, and promoting equity in student access to educational resources and opportunities.

Proposed Priority:

The Department proposes the following priority for this program. We may apply this priority in any year in which this program is in effect.

Proposed Priority - Technical Assistance - School Safety National Activities Program-National Technical Assistance Center on Positive Behavioral Interventions and Supports.

The purpose of this priority is to enhance the capacity of SEAs and LEAs to implement positive and safe school environments, and effectively support and respond to students' social, emotional, behavioral, and mental health needs to improve their learning, by implementing evidence-

based practices (EBPs)<sup>2</sup> within a Multi-Tiered System of Support (MTSS)/Positive Behavioral Interventions and Supports (PBIS) framework<sup>3</sup> in one or more of the following settings:

(i) Programs or schools serving high percentages of students from low-income families in the following settings:

- (1) Early learning programs.
- (2) Elementary schools.
- (3) Middle schools.
- (4) High schools.
- (5) Career and technical education programs.
- (6) Rural schools.

(ii) Alternative schools and programs.

(iii) Juvenile justice system or correctional facilities.

(iv) Low-performing schools.

(v) Schools with a high student-to-mental health provider ratio.

(vi) Schools with high rates of chronic absenteeism, exclusionary discipline, referrals to the juvenile justice

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<sup>2</sup>For the purposes of this priority, "evidence-based practices" (EBPs) means, at a minimum, demonstrating a rationale (as defined in 34 CFR 77.1) based on high-quality research findings or positive evaluation that such activity, strategy, or intervention is likely to improve student outcomes or other relevant outcomes.

<sup>3</sup> PBIS is an evidence-based, tiered framework (Tier 1: Universal, Primary Prevention; Tier 2: Targeted, Secondary Prevention; and Tier 3: Intensive and Individualized, Tertiary Prevention) for supporting students' behavioral, academic, social, emotional, and mental health.

system, bullying/harassment, community and school violence, or substance abuse.

(vii) Schools in which students recently experienced a natural disaster, incident of violence, or traumatic event.

(viii) Schools with high percentages of students with disabilities.

To meet this priority, the applicant must propose to achieve, at a minimum, one or more of the following expected outcomes:

(a) Improved systems and resources at the national, regional, State, and district levels to support, develop, align, and sustain local implementation of MTSS/PBIS efforts to organize EBPs to support positive school climates and respond to student social, emotional, behavioral, and mental health needs to improve access to and engagement in learning.

(b) Improved capacity of SEA and LEA personnel to support the knowledge and skills development of school personnel to implement MTSS/PBIS as a framework to organize EBPs to support and respond to student needs, particularly those from underserved, culturally and linguistically diverse backgrounds, and those whose behaviors may interfere with a student's ability to fully participate in, and benefit from, a high-quality learning environment.

(c) Increased use by SEAs, LEAs, and school-based personnel of reliable and valid tools and processes for enhancing and assessing the fidelity of implementation of a MTSS/PBIS Framework and for measuring intended outcomes, including improvements in school climate; time spent on instruction; well-being and belonging; overall academic achievement; and reductions in absenteeism, discipline referrals, suspensions, expulsions, the use of restraints or seclusion, illegal use of drugs, and referrals to law enforcement.

(d) Improved implementation of a MTSS/PBIS framework, EBPs, and assessment of SEA or LEA recipients of grant programs that focus on improving positive school climates and implementing EBPs to support and respond to students' social, emotional, behavioral, and mental health needs.

(e) Enhanced response and recovery assistance, as requested by and in collaboration with the Department, for violent or traumatic incidents that impact school communities, including intensive individualized support to facilitate recovery of the learning environment.

(f) Increased body of knowledge and evidence to enhance implementation of PBIS and other emerging MTSS frameworks and EBPs to address the social, emotional, behavioral, and mental health needs of students in the settings established in the priority.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the *Federal Register*. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Requirements:

The Department proposes the following eligible applicants and application requirements for this program. We may apply one or more of these requirements in any year in which the program is in effect.

Eligible Applicants: SEAs; State lead agencies under Part

C of the IDEA; LEAs, including public charter schools that are considered LEAs under State law; institutions of higher education; other public agencies; private nonprofit organizations; freely associated States and outlying areas; Indian Tribes or Tribal organizations; and for-profit organizations.

Proposed Application Requirements:

(a) Demonstrate how the proposed project will-

(1) Improve SEAs' and LEAs' implementation, scaling, and sustaining of EBPs within a MTSS/PBIS framework and policies that are designed to improve school climate and, as needed, provide additional behavioral supports for students whose behavior impacts their ability to fully participate in, and benefit from, a high-quality learning environment, including students with disabilities. To meet this requirement, the applicant must--

(i) Present applicable State, regional, or local data demonstrating SEAs' and LEAs' needs related to (A) implementation of EBPs and policies to improve school climate, student well-being and belonging; and (B) increasing students' ability to fully participate in, and benefit from, a high-quality learning environment;

(ii) Demonstrate knowledge of current education issues and policy initiatives relating to MTSS/PBIS and school climate practices and policies and EBPs to

effectively support and respond to student behavior that impacts learning; and

(iii) Present information about the current level of implementation of MTSS/PBIS, EBPs, policies, best practices, and benefits for all students, especially underserved students and those from culturally and linguistically diverse backgrounds; and

(2) Improve the implementation of EBPs within a MTSS/PBIS framework to effectively support and respond to student behaviors that impact access to and participation in learning.

(b) Demonstrate how the proposed project will--

(1) Ensure equal access and treatment for members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. To meet this requirement, the applicant must describe how it will--

(i) Identify the TA and information needs of the intended recipients; and

(ii) Ensure that services and products meet the needs of the intended recipients of the TA;

(2) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide--

(i) Measurable intended project outcomes; and

(ii) The logic model<sup>4</sup> by which the proposed project will achieve its intended outcomes that depicts, at a minimum, the goals, activities, outputs, and intended outcomes of the proposed project;

(3) Use a conceptual framework to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework;

(4) Be based on current research and make use of EBPs. To meet this requirement, the applicant must describe--

(i) The current research on the assessment of the implementation of MTSS/PBIS frameworks and related EBPs;

(ii) The current research about adult learning principles and implementation science that will inform the proposed TA; and

(iii) How the proposed project will incorporate current and emerging research and practices in the development and delivery of its products and services;

(5) Develop products and provide services that are of high quality and sufficient intensity and duration to

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<sup>4</sup> As defined in 34 CFR 77.1, "logic model" (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.*, the active "ingredients" that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe--

(i) How it proposes to identify or develop the knowledge base of PBIS;

(ii) Its proposed approach to universal, general TA,<sup>5</sup> which must identify the intended recipients, including the type and number of recipients, that will receive the products and services, a description of the products and services that the Center proposes to make available, and the expected impact of those products and services under this approach;

(iii) Its proposed approach to targeted, specialized TA,<sup>6</sup> which must identify--

(A) The intended recipients, including the type and number of recipients, that will receive the products and services, a description of the products and services that the Center proposes to make available, and the expected

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<sup>5</sup> "Universal, general TA" means TA and information provided to independent users through their own initiative, resulting in minimal interaction with Center staff and including one-time, invited or offered conference presentations by Center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the Center's website by independent users. Brief communications by Center staff with recipients, either by telephone or email, are also considered universal, general TA.

<sup>6</sup> "Targeted, specialized TA" means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more Center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

impact of those products and services under this approach;  
and

(B) Its proposed approach to measure the readiness of potential TA recipients to work with the project, assessing, at a minimum, their current systems, available resources, and ability to build capacity at the local level; and

(iv) Its proposed approach to intensive, sustained TA,<sup>7</sup> which must identify--

(A) The intended recipients, including the type and number of recipients from a variety of settings and geographic distribution, that will receive the products and services designed to improve school climate;

(B) Its proposed approach to measure the readiness of the State- and local-level personnel to work with the project, including their commitment to the initiative, alignment of the initiative to their needs, current systems, available resources, and ability to build capacity at the local level;

(C) Its proposed plan for assisting SEAs, LEAs, local Part C agencies, charter management organizations, and private school organizations to build or enhance training

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<sup>7</sup> "Intensive, sustained TA" means TA services often provided on-site and requiring a stable, ongoing relationship between the Center staff and the TA recipient. "TA services" are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

systems that include professional development based on adult learning principles and coaching; and

(D) Its proposed plan for working with appropriate levels of the education system (e.g., SEAs, regional TA providers, LEAs, schools, families) to ensure that there is communication between each level and that there are systems in place to support the use of PBIS;

(6) Develop products and implement services that maximize efficiency. To address this requirement, the applicant must describe--

(i) How the proposed project will use technology to achieve the intended project outcomes;

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration; and

(iii) How the proposed project will use non-project resources to achieve the intended project outcomes; and

(7) Develop a dissemination plan that describes how the applicant will systematically distribute information, products, and services to varied intended audiences, using a variety of dissemination strategies, to promote awareness and use of the Center's products and services.

(c) Include an evaluation plan for the project as described in the following paragraphs. The evaluation plan must describe measures of progress in implementation, including criteria for determining the extent to which the project's products and services have met the goals for

reaching its target population; measures of intended outcomes or results of the project's activities in order to evaluate those activities; and how well the goals or objectives of the proposed project, as described in its logic model, have been met.

The applicant must provide an assurance that, in designing the evaluation plan, it will--

(1) Designate, with the approval of the Office of Special Education Programs (OSEP) project officer in consultation with Office of Elementary and Secondary Education (OESE) staff, a project liaison with sufficient dedicated time, experience in evaluation, and knowledge of the project to work in collaboration with the Center to Improve Program and Project Performance (CIPP),<sup>8</sup> the project director, and the OSEP project officer on the following tasks:

(i) Revise the logic model submitted in the application, as appropriate, to provide for a more comprehensive measurement of implementation and outcomes and to reflect any changes or clarifications to the model discussed at the kickoff meeting;

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<sup>8</sup> The major tasks of CIPP are to guide, coordinate, and oversee the design of formative evaluations for every large discretionary investment (i.e., those awarded \$500,000 or more per year and required to participate in the 3+2 process) in OSEP's Technical Assistance and Dissemination; Personnel Development; Parent Training and Information Centers; and Educational Technology, Media, and Materials programs. The efforts of CIPP are expected to enhance individual project evaluation plans by providing expert and unbiased TA in designing the evaluations with due consideration of the project's budget. CIPP does not function as a third-party evaluator.

(ii) Refine the evaluation design and instrumentation proposed in the application, as appropriate, to be consistent with the revised logic model and using the most rigorous design suitable (e.g., prepare evaluation questions about significant program processes and outcomes; develop quantitative or qualitative data collections that permit both the collection of progress data, including fidelity of implementation, as appropriate, and the assessment of project outcomes; and identify analytic strategies); and

(iii) Revise the evaluation plan submitted in the application such that it clearly--

(A) Specifies the evaluation questions, measures, and associated instruments or sources for data appropriate to answer these questions, suggests analytic strategies for those data, provides a timeline for conducting the evaluation, and includes staff assignments for completing the evaluation activities;

(B) Delineates the data expected to be available by the end of the second project year for use during the project's evaluation (3+2 review) by OSEP for continued funding described under the heading Fourth and Fifth Years of the Project; and

(C) Can be used to assist the project director and the OSEP project officer in consultation with OESE staff, with the assistance of CIPP, as needed, to specify the

project performance measures to be addressed in the project's annual performance report;

(2) Dedicate sufficient staff time and other resources during the first 6 months of the project to collaborate with CIPP staff, including regular meetings (e.g., weekly, biweekly, or monthly) with CIPP and the OSEP project officer, in order to accomplish the tasks described in paragraph (c)(1) of this section; and

(3) Dedicate sufficient funds in each budget year to cover the costs of carrying out the tasks described in paragraphs (c)(1) and (2) of this section and revising and implementing the evaluation plan. Please note in your budget narrative the funds dedicated for this activity.

(d) Demonstrate how--

(1) The proposed project will encourage applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, language, sexual orientation, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to carry out the proposed activities and achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits.

(e) Demonstrate how--

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe--

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks;

(2) Key project personnel and any consultants and subcontractors will be allocated and how these allocations are appropriate and adequate to achieve the project's intended outcomes;

(3) The proposed management plan will ensure that the products and services provided are of high quality, relevant, and useful to recipients; and

(4) The proposed project will benefit from a diversity of perspectives, including those of families, educators, TA providers, researchers, and policymakers, among others, in its development and operation.

(f) Address the following application requirements. The applicant must--

(1) Include personnel-loading charts and timelines, as applicable, to illustrate the management plan described in the narrative;

(2) Include, in the budget, attendance at the following:

(i) A one and one-half day kickoff meeting in Washington, D.C. after receipt of the award, and an annual planning meeting in Washington, D.C., with the OSEP project officer, OESE representative, and other relevant staff during each subsequent year of the project period.

Note: Within 30 days of receipt of the award, a post-award teleconference must be held between the OSEP project officer and the grantee's project director or other authorized representative;

(ii) A two- and one-half day project directors' conference in Washington, D.C. during each year of the project period;

(iii) Three annual two-day trips to attend Department briefings, Department-sponsored conferences, and other meetings, as requested by OSEP or OESE; and

(iv) A one-day intensive 3+2 review meeting in Washington, D.C. during the second year of the project period;

(3) Include, in the budget, a line item for an annual set-aside of 5 percent of the grant amount to support emerging needs that are consistent with the proposed

project's intended outcomes, as those needs are identified in consultation with, and approved by, the OSEP project officer in consultation with OESE staff as appropriate. With approval from the OSEP project officer, the project must reallocate any remaining funds from this annual set-aside no later than the end of the third quarter of each budget period;

(4) Maintain a high-quality website, with an easy-to-navigate design, that meets government or industry-recognized standards for accessibility;

(5) Ensure that annual project progress toward meeting project goals is posted on the project website; and

(6) Include an assurance to assist OSEP with the transfer of pertinent resources and products and to maintain the continuity of services to States during the transition to a new award at the end of this award period, as appropriate.

#### Fourth and Fifth Years of the Project:

In deciding whether to continue funding the project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), including--

(a) The recommendations of a 3+2 review team consisting of experts who have experience and knowledge in PBIS. This review will be conducted during a one-day intensive meeting that will be held during the last half of the second year of the project period;

(b) The timeliness with which, and how well, the requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The quality, relevance, and usefulness of the project's products and services and the extent to which the project's products and services are aligned with the project's objectives and likely to result in the project achieving its intended outcomes.

References:

- Bradshaw, C., Waasdorp, T., & Leaf, P. (2012). Effects of school-wide positive behavioral interventions and supports on child behavior problems. *Pediatrics*, 130(5), 1136-1145.  
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Final Priority and Requirements: We will announce the  
 final priority and requirements in a document published in

the *Federal Register*. We will determine the final priority and requirements after considering responses to the proposed priority and requirements and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does not solicit applications. In any year in which we choose to use the priority and requirements, we invite applications through a notice inviting applications in the *Federal Register*.

#### Executive Orders 12866 and 13563

#### Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may—

- (1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency “to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.” The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include “identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.”

We are issuing the proposed priority and requirements only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on an analysis of

anticipated costs and benefits, we believe that the proposed priority and requirements are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with the Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

#### Potential Costs and Benefits

The Department believes that this proposed regulatory action would not impose significant costs on eligible entities, whose participation in our programs is voluntary, and costs can generally be covered with grant funds. As a result, the proposed priority and requirements would not impose any particular burden, except when an entity voluntarily elects to apply for a grant. The proposed priority and requirements would help ensure that the Center grant program selects a high-quality applicant to implement activities that meet the goals of the program. We believe these benefits would outweigh any associated costs.

## Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed priority and requirements easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed priority and requirements clearly stated?
- Do the proposed priority and requirements contain technical terms or other wording that interferes with their clarity?
- Could the description of the proposed priority and requirements in the SUPPLEMENTARY INFORMATION section of the preamble be more helpful in making the proposed priority and requirements easier to understand? If so, how?
- What else could we do to make the proposed priority and requirements easier to understand?

To send any comments on how the Department could make the proposed priorities and requirements easier to understand, see the instructions in the ADDRESSES section.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened

federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

#### Regulatory Flexibility Act Certification

The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below \$7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that this proposed regulatory action would affect are LEAs. Of the impacts we estimate accruing to grantees or eligible entities, all are voluntary.

Therefore, we do not believe that the proposed priority and requirements would significantly impact small entities beyond the potential for increasing the likelihood of their applying for, and receiving, a competitive grant from the Department.

## Paperwork Reduction Act

The proposed priority and requirements contain information collection requirements that do not require the Office of Management and Budget's approval for the information collection, since the Department anticipates less than 9 applicants for this targeted and specialized program. According to section 1320.3(c) of the Paperwork Reduction Act (PRA), "the "collection of information" includes the obtaining of information by or for an agency by means of identical questions imposed on ten or more persons."

Accessible Format: On request to the program contact person listed under FOR FURTHER INFORMATION CONTACT, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the *Federal Register*. You may access the official edition of the Federal Register and the Code of Federal Regulations at [www.govinfo.gov](http://www.govinfo.gov). At this site you can view this document, as well as all other documents of the Department published in the *Federal Register*, in text or Portable Document

Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the *Federal Register* by using the article search feature at [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**James F. Lane,**

*Senior Advisor, Office of the Secretary,*

*Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Elementary and Secondary Education.*